



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 12, 1990

Mr. A. W. Pogue
Commissioner of Insurance
State Board of Insurance
1110 San Jacinto
Austin, Texas 78701-1998

Open Records Decision No. 547

Re: Whether a draft of an
"Early Warning System Manual"
prepared for the State Board
of Insurance is protected from
required public disclosure
under sections 3(a)(6) or
3(a)(11) of article 6252-17a,
V.T.C.S. (RQ-1738)

Dear Mr. Pogue:

The State Board of Insurance received an open records request for a copy of the "Texas State Board of Insurance Early Warning Information System Manual (Proposed)." The manual is being prepared under the authority of Texas Insurance Code articles 1.32, 3.55-1 and 21.28-A, section 11, which require the board to fix uniform standards and criteria for the early detection of continued business operations of an insurer that might be hazardous to policy holders. When completed the manual will set forth procedures for the State Board of Insurance to follow in detecting and monitoring problems in the Texas insurance industry. A separate policy part of the manual has been adopted, while a procedures part is currently in the preliminary stages of drafting by your staff for adoption by the agency.

The procedures draft includes summaries of proposed actions to be taken by the agency in various circumstances involving identifying and monitoring troubled insurance companies that are licensed to do business in Texas, drafts of form letters, and work requests and other forms to be utilized in various circumstances.

While the policy manual that has been adopted has been released to the requestor, the board seeks to withhold the drafts of the procedures manual from required public

disclosure under sections 3(a)(6) and 3(a)(11) of the Open Records Act.

Section 3(a)(11) excepts from required public disclosure:

inter-agency or intra-agency memorandums
or letters which would not be available by
law to a party in litigation with the agency.

Section 3(a)(11) is designed to protect from disclosure advice and opinion on policy matters; it protects documents comprising the process by which government policy is formulated. Attorney General Opinion H-436 (1974).

Discussion of the nature or kinds of procedures to adopt in order to implement a particular policy is itself a policy matter. This is especially true when dealing with drafts or proposals of agency memoranda that are generated and discussed by a governmental body in the course of its deliberations prior to adopting a policy or procedure. The true character of the information at issue here is that of a series of preliminary intra-agency memoranda formulating agency practices that will culminate in a manual that will be adopted for agency use. In essence, these memoranda consist of the deliberations or comments, advice or opinions of the agency's staff. They are the preliminary recommendations or proposals formulated in the course of deliberations by the agency's staff for presentation to the agency's commissioners. See Open Records Decision Nos. 213, 211, 196 (1977); 149, 137 (1976); 81 (1975); cf. Open Records Decision No. 388 (1983).

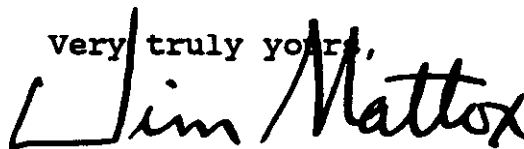
We conclude that the draft of the procedures manual constitutes recommendations of an intra-agency nature used in the deliberative process of the agency, and is therefore protected from required public disclosure by section 3(a)(11) of the Open Records Act. Because we conclude that the preliminary drafts of the manual are protected by section 3(a)(11), we do not address your contention that they are protected by section 3(a)(6).

S U M M A R Y

Drafts of an agency procedure manual
that are the subject of ongoing deliberations

are protected from required public disclosure
under section 3(a)(11) of the Open Records
Act, article 6252-17a, V.T.C.S.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, slightly slanted style. The first letter "J" is large and loops around the "i". The "M" is also large and loops around the "a". The "T" is tall and thin, and the "X" is formed by two intersecting strokes.

J I M M A T T O X
Attorney General of Texas

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